



ZONING BOARD OF ADJUSTMENT

Draft Minutes

September 15, 2020

7:30 pm @ Community Development Department

Physical Location: 3 North Lowell Road (Community Development Department)

Live Broadcast: WCTV Channel 20 – Local Cable TV

Live Stream: <http://www.wctv21.com/>

Attendance:

Chairman Mike Scholz- present (via Zoom)

Vice Chair Bruce Breton- present (at Community Development)

Pam Skinner, Secretary- present (at Community Development)

Neelima Gogumalla, regular member- present (at Community Development)

Nick Shea, regular member- present (via Zoom)

Betty Dunn, alternate- present (via Zoom)

**Kevin Hughes, alternate- excused
(attendance taken by roll call vote)**

Staff:

Brian Arsenault- ZBA Administrator/ Code Enforcement

Anitra Lincicum- minute taker

Chairman Scholz read the following statement:

“As Chair of the ZBA, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, the public body is authorized to meet electronically. Please note that all votes that are taken during the meeting shall be done by roll call vote only.

Let’s start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during the meeting, which is required under the Right-to-Know law.”

Public Hearing

Case #23-2020: Parcel 16-D-201

(Continued from September 8th)

Applicant – Edward N. Herbert Associates, Inc.

Owner – Indian Rock Development, LLC

Location – 10 Enterprise Drive

Zoning District - Residential A District, Rural District, Wetland & Watershed Protection District (WWPD), Cobbetts Pond & Canobie Lake Watershed Protection Overlay District (WPOD)

Variance relief is requested to develop a five-lot subdivision for new single-family dwellings to be located on a private road from the following Section(s) 702 & Appendix A-1 to allow 0’ of

frontage on a Class V road, shown as Road “A” where 175’ is required on a public road.

Ms. Skinner stated the information of the case as this case has been continued twice and had been read into the record previously.

Chairman Scholz asked the Board if they had any questions regarding the case being heard by the Planning Board; they did not at this time.

Mr. Shayne Gendron addressed the Board and is employed by Edward N. Herbert and Associates and is employed by Indian Rock Road Development and Robert Windmill. Mr. Gendron stated that all of the road drainage will be up to all town and AOT regulations. Mr. Gendron stated that Mr. Windmill is a current abutter to the property. Mr. Gendron stated that many of the neighbors were concerned about the area as it slopes down towards the pond. Mr. Windmill approached the current owner of the property in an attempt to protect the property. The current owner is not interested in a 5-lot subdivision as Mr. Windmill is if these approvals can be put in place; Mr. Gendron stated that this is the nexus for why Mr. Windmill is doing the project. Mr. Gendron is asking the Board to look favorably on the application and they plan on going through the appropriate process with the Planning Board. The applicant has agreed to the Snow Pro plowing process. Chairman Scholz asked how many feet are on Enterprise Drive; Mr. Gendron stated there are approximately 600 feet on Enterprise Drive. Mr. Gendron stated there is an access easement that would accommodate a 50 foot right of way for the road.

Ed Lapointe, 16 North Shore Road addressed the Board via Zoom. Mr. Lapointe asked about the leech fields, particularly his own, and why someone would choose to make the road private if it could remain a public road.

Mr. Gendron stated that the development is not happening in the area of the leech fields; it is a ways away from that area and where that property would be. Mr. Gendron stated they would like to gate the road and make it a little more private. Mr. Gendron stated that Mr. Windmill discussed on the site walk building a road at one point but he does not have plans to use or build that access road at this time.

Ms. Gogumalla stated that in the variance relief request, there is a request for relief from Section 702 and Appendix A-1 and Mr. Arsenault stated that there is a request for the 5-lot subdivision.

Mr. Gendron requested that if the Board were considering an approval, he would like to request the approval be for the cover sheet, 1 of 15 as the design could change slightly. Mr. Gendron stated that if the variance were going to be granted, he would like to be tied to the cover sheet as the design might change slightly.

Ms. Dunn stated that if they were to grant the variance, there would be wording in the motion that would be not more than 5 lots.

A motion was made by Vice Chair Breton to enter Deliberative session. Seconded by Ms. Skinner. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-yes. Vote 5-0. Motion passes.

Chairman Scholz does not see this as meeting the hardship criteria. Chairman Scholz understands why the applicant would want to build the road but he does not see the hardship for it being built as a private road.

Vice Chair Breton stated that if it were a public road, it might look quite different and made reference to the attorney's letter that had been addressed to the Board. Vice Chair Breton stated that a 5-lot subdivision would benefit the abutters. The road does not have to be built to town standards so there would be less impervious surface; it could be smaller with less impervious surface around the pond. Chairman Scholz stated that the applicant has stated they were able to build a public road; he has admitted he could do it. Chairman Scholz stated that the applicant wants it to be a gated community and would like to see it be a private road but that does not necessarily meet the variance criteria. Chairman Scholz stated that it does not appear that this is a property that cannot be used in strict conformance with the variance criteria.

Mr. Shea asked Vice Chair Breton, as a selectman, if the town could change this from a public road to a private road. Vice Chair Breton does not think so and further stated he does see the benefit of a smaller road with less impervious surface as stated before. Chairman Scholz stated that the intent is that the subdivisions needs to be generated on public roads and he does not see anything in the application that states that this cannot be created on a public road. The Board discussed that even though the variance request was for the road, there would be a condition for no more than 5 lots on a non-town road with no frontage. Mr. Shea asked why the special conditions of the run off on the property and the protection of the pond might not be considered a special condition. Chairman Scholz stated it can be made into a public road; it does not need to be a private road according to Chairman Scholz.

Chairman Scholz stated they are trying to decide if it meets the criteria of a private road versus a public road and it does not appear to meet the five criteria. Vice Chair Breton stated that this is the first private road he has seen around the pond and he would like to see a road that is less demanding on the pond.

After discussion, Chairman Scholz stated that because of its proximity to the pond and because it is one of the larger lots still left on the pond and a private road would be better for the pond and the hardship would be its impact on the pond. Mr. Shea stated that green Snow Pro program is also part of the application.

A motion was made by Vice Chair Breton for Case #23-2020: Parcel 16-D-201 to grant variance relief as requested to develop a five-lot subdivision for new single-family dwellings to be located on a private road from the following Section(s) 702 & Appendix A-1 to allow 0' of frontage on a Class V road, shown as Road "A" where 175' is required on a public road per plan dated July 2020, Sheet 1 of 15 and signed and dated by the Chair. Seconded by Mr. Shea.

**Roll call vote: Chairman Scholz, Vice Chair Breton, Mr. Shea and Ms. Skinner- yes
Ms. Gogumalla- no.**

**Reasons for denial: 1(public interest), 2 (spirit of the ordinance) and 5 (hardship)
Vote 4-1.**

139 **Motion passes.**

140 **The Chairman advised of the 30-day appeal period.**

141
142 *The Chairman called a five-minute recess and the meeting resumed at 8:25pm.*

143
144 *Vice Chair Breton recused himself and Ms. Dunn was seated for Vice Chair Breton by the*
145 *Chairman for Case #11-2020.*

146
147 **Case #11-2020: Parcel 12-A-500**

(Continued from September 8th)

148 **Applicant - New Hampshire Catholic Charities**

149 **Owner – New Hampshire Catholic Charities**

150 **Location – 21 Searles Road**

151 **Zoning District - Rural District and Cobbetts Pond & Canobie Lake**

152 **Watershed Protection Overlay District (WPOD)**

153
154 Variance relief is requested from **Section(s) 706.4 and 706.8** to allow five signs to be installed.
155 Specifically from **Sec. 706.4 and Sec. 706.8**: To allow a building wall sign to be erected 8.1 sf,
156 where the dimensions of signs total 3 sf is required. And four freestanding entrance signs, with
157 one being double sided, to be erected larger (43.3 sf) than the dimensions of signs total 3 sf is
158 required, installed 8' in height, where 6' is required, with no front lot line setback, where 10' is
159 required, along Searles Road in front of the historic recognized stonewall.

160
161 Ms. Skinner read the case and the variance relief into the record as the case was reposted and had
162 been read into the record previously.

163
164 Attorney Dan Muller addressed the Board. Attorney Muller stated that they were before the
165 Board to discuss the signage neat the stone wall. Attorney Muller stated that the McCauley
166 Commons property was cited as an example at the previous meeting for this case and the
167 applicant did go to look at the signs at that location. Attorney Muller stated that because they are
168 free standing signs, they are now subject to the town's height restrictions. Attorney Muller stated
169 that the first sign is to identify the assisted living facility and it is not the height of the turret.
170 Attorney Muller stated that the face size is down a little bit from the original application.
171 Attorney Muller stated that the signs are not affixed to the wall and they are trying to make them
172 visible to the public. Attorney Muller stated they are trying to direct the public down Searles
173 Road with the signage.

174
175 Chairman Scholz asked about the signs on the wall that are currently there. Attorney Muller
176 stated there would be no signs on the wall. Attorney Muller stated that they will all be free
177 standing and not on the wall.

178
179 Chairman Scholz invited public comment at 8:37pm.

180
181 Ms. Skinner read the letter from the Conservation Commission; they have no issues with the plan
182 at this time.

There was a letter from the HDCEC in the form of an email from Ms. Wendy Williams. The proposed signs have since been revised and the concerns have been addressed by the applicant according to the email.

A motion was made by Ms. Dunn to enter Deliberative session. Seconded by Ms. Skinner. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-yes. Vote 5-0. Motion passes.

Ms. Dunn stated that she understands that signs are needed and having them be 10 feet from the road would make them useless and she does agree that they the variance should be granted. Chairman Scholz stated that the walls meet the hardship criteria. The lack of good signage can be difficult in the area as well.

A motion was made by Mr. Shea to grant variance relief as requested from Section(s) 706.4 and 706.8 to allow five signs to be installed. Specifically from Sec. 706.4 and Sec. 706.8: To allow a building wall sign to be erected 8.1 sf, where the dimensions of signs total 3 sf is required. And four freestanding entrance signs, with one being double sided, to be erected larger (43.3 sf) than the dimensions of signs total 3 sf is required, installed 8' in height, where 6' is required, with no front lot line setback, where 10' is required, along Searles Road in front of the historic recognized stonewall. Seconded by Ms. Dunn.

Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-yes.

**Vote 5-0.
Motion passes.
The Chairman advised of the 30-day appeal period.**

Ms. Dunn recused herself as a Board member and stated she will be staying on Zoom as a member of the public.

Vice Chair Breton was seated for Case #25-2020.

Case #25-2020: Parcel 22-L-30

(Continued from September 8th)

Applicant - Cronin, Bisson & Zalinsky, P.C.

Owner - David and Elena Richards

Location - 46 West Shore Road

**Zoning District - Residential A District and Cobbetts Pond & Canobie Lake
Watershed Protection Overlay District (WPOD)**

Variance relief is requested from **Section 702 and Appendix A-1**: To allow construction of a new 1866 +/- sf two-bedroom single family dwelling (SFD) on a pre-existing non-conforming lot of record that contains 4,791 +/- sf of building area where a minimum land area of 50,000 sf is required. To allow the SFD a 11' southerly side yard setback and a 15' northerly side yard setback, where 30' is required. To allow the SFD a 28' rear yard setback, where 30' is required.

To allow the SFD a 25' front yard setback from West Shore Road, where 50' is required. To allow 50' of frontage along West Shore Road, where 175' is required.

Chairman Scholz stated that the first thing the Board need to do is determine if they have jurisdiction over the case in light of the Fisher v. Dover doctrine.

Attorney Muller stated that the house has been reduced in size and the applicant eliminated one of the setbacks in this form of the application. Attorney Muller stated that they are still seeking a single-family house; they have tried to go back and address concerns that were raised by the Board. Attorney Muller also mentioned the reduction of impervious surface; the impervious surface went from 22.9% to 19.9%. The applicant has reduced the size of the house and changed some of the design of the property. Attorney Muller stated it now meets the zoning criteria around impervious surface. Attorney Muller stated that the driveway is now an impervious surface.

A motion was made by Vice Chair Breton to go into Deliberative session. Seconded by Mr. Shea. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-yes.

Chairman Scholz stated he does not believe they have jurisdiction to hear this case. The Board discussed that the plan is not materially different than the previous plan.

A motion was made by Vice Chair Breton that the Board is without jurisdiction to hear Case#25-202 based on the Fisher v. Dover doctrine. Seconded by Ms. Skinner. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-yes.

The Board is not proceeding with the case and will not hear the case as they are without jurisdiction

A motion was made by Vice Chair Breton to adjourn at 9:01pm. Seconded by Ms. Skinner. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-yes. Vote 5-0. Motion passes.

Respectfully submitted by Anitra Lincicum